

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| FLORIDA POWER & LIGHT COMPANY |) | File Nos. 0008453005, 0008453084, |
| |) | 0008453085, 0008453086, 0008453087, |
| Requests for Waiver of 900 MHz Application |) | 0008453088, 0008453089, 0008453090, and |
| Freeze |) | 0008453093 |
| |) | |

ORDER

Adopted: June 18, 2020

Released: June 18, 2020

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this Order, we address applications filed by Florida Power and Light Company (FPL)¹ to build a new 900 MHz network for the Gulf Power service territory that FPL's parent company NextEra Energy Inc. (NextEra) acquired² from Southern Company, and we address FPL's associated request for waiver of the 900 MHz application freeze.³ For the reasons discussed below, we deny the waiver request and dismiss the applications.

2. *Background.* FPL is an electric utility that serves nearly five million customers in Florida.⁴ It operates a 900 MHz Business/Industrial Land Transportation system to provide communications related to electric service restoration and maintenance, disaster recovery, and nuclear security and monitoring.⁵ FPL's parent company, NextEra, reached an agreement to acquire Gulf Power—a utility that serves about 450,000 customers in the Florida Panhandle—from Southern Company.⁶ Gulf Power does not currently operate a 900 MHz system, but relies on Southern Company's 800 MHz private land mobile radio system to cover the Gulf Power service territory.⁷ NextEra did not acquire Southern Company's 800 MHz system in the agreement to acquire Gulf Power, as Southern Company operates the 800 MHz system to serve other customers, including commercial entities.⁸

¹ See Request for Waiver of the 900 MHz Application Freeze, FCC File Nos. 0008453005, 0008453084, 0008453085, 0008453086, 0008453087, 0008453088, 0008453089, 0008453090, and 0008453093 (filed Nov. 28, 2018) (Waiver Request).

² Letter from Bryan N. Tramont and Timothy J. Cooney, Counsel for NextEra Energy, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-200, at 2 (filed May 1, 2020) (*May 1 Ex Parte*).

³ See *Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum*, WT Docket No. 17-200, Public Notice, 33 FCC Rcd 8735 (WTB 2018) (*900 MHz Freeze Public Notice*).

⁴ Waiver Request at 1.

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

NextEra anticipates its Gulf Power service territory will be integrated into FPL in January 2021.⁹

3. In September 2018, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for new or expanded 900 MHz operations to maintain a stable spectral landscape while the Commission determined how to proceed with respect to that spectrum.¹⁰ The *900 MHz Freeze Public Notice* noted that licensees have recourse through the Commission's waiver provisions to request an exception to the freeze.¹¹ In March 2019, the Commission released a *Notice of Proposed Rulemaking* proposing to realign the 900 MHz band to create a 3/3 megahertz broadband segment, while reserving the remaining 2/2 megahertz for narrowband operations.¹² In May 2020, the Commission adopted a *Report and Order* that established a 3/3 megahertz broadband segment, two narrowband segments of 1.5/1.5 megahertz and .5/.5 megahertz, and a transition mechanism based primarily on negotiations between prospective broadband licensees and existing narrowband incumbent licensees.¹³ At the time it adopted the *Report and Order*, the Commission partially lifted the 900 MHz freeze for relocation of incumbents as part of a transition plan and clarified that the current freeze, which prohibits contour extensions, remains in place.¹⁴

4. In November 2018, in light of the Gulf Power transaction, FPL filed nine applications for a new 900 MHz network across 24 locations in the Gulf Power territory of Florida.¹⁵ FPL requests authorization to operate on frequencies in both the broadband and narrowband segments of the new 900 MHz band plan.¹⁶ In its waiver request, FPL asserts that the new 900 MHz network is necessary to support interoperability between FPL's existing system and the Gulf Power service territory that FPL's parent company NextEra acquired.¹⁷ FPL also claims that the waiver is necessary to provide for cost-effective construction of the new network and to eliminate both internal coverage gaps and the need to maintain two distinct networks operating in different bands.¹⁸ FPL also seeks a limited waiver to permit it to file future applications necessary to close coverage gaps ("dead spots") identified in its existing system

⁹ *May 1 Ex Parte* at 2-3.

¹⁰ *900 MHz Freeze Public Notice*. In October 2019, the Wireless Telecommunications Bureau modified the freeze to provide greater flexibility for 900 MHz band incumbents to relocate out of the broadband segment. Specifically, the modification permits incumbents to exchange frequencies in a manner that does not increase that incumbent's net number of licensed frequencies and is consistent with the Commission's band realignment. *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band; pdv Wireless, Inc. d/b/a Anterix, Request for Modification of 900 MHz Temporary Filing Freeze*, WT Docket No. 17-200, Order, 34 FCC Rcd 9369 (WTB 2019) (*900 MHz Freeze Modification*).

¹¹ *900 MHz Freeze Public Notice*, 33 FCC Rcd at 8736, n. 4.

¹² *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019) (*900 MHz NPRM*).

¹³ *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Orders, FCC 20-67, pages 12-41, paras. 27-95 (2020) (*900 MHz R&O and Orders*).

¹⁴ *Id.* at 69, paras. 175-76.

¹⁵ See Main Tab and Locations Tab, FCC File Nos. 0008453005, 0008453084, 0008453085, 0008453086, 0008453087, 0008453088, 0008453089, 0008453090, and 0008453093. FPL requests authority to operate at 24 fixed locations included in eight applications and a mobile location in one application (see FCC File No. 0008453088).

¹⁶ Compare Frequencies Tab, FCC File Nos. 0008453005, 0008453084, 0008453085, 0008453086, 0008453087, 0008453088, 0008453089, 0008453090, and 0008453093 with *900 MHz R&O and Orders* at 17, para. 35.

¹⁷ See Waiver Request at 2-4.

¹⁸ See *id.* at 4-5.

and the new system, provided the outer, composite contours of the systems are not increased.¹⁹

5. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁰ FPL asserts that it meets the second prong of the waiver standard.²¹

6. We conclude that the circumstances presented by FPL do not warrant a waiver of the 900 MHz freeze. Of the 24 requested new sites in the Gulf Power service territory, the nearest site is at least 160 miles from FPL's existing service area. We find FPL's waiver request to be substantially similar to our recent denial of a 900 MHz freeze waiver in *Lower Colorado River Authority*, where LCRA requested three additional sites to expand its 900 MHz network by 75, 102, and 110 miles, respectively.²² Similarly, in *Rohm and Haas Texas Inc.*, we denied a 900 MHz freeze waiver request seeking to expand use of 900 MHz frequencies by adding capacity and relocating operations at a distance of 26 miles.²³ Here, FPL seeks authorization for a greater number of sites further removed from FPL's current operations than those requested and denied in *Lower Colorado River Authority* and *Rohm and Haas Texas Inc.*

7. We find FPL's request distinguishable from our grant of a 900 MHz freeze waiver in *Long Island Power Authority*, where we determined that grant of the request would result in a *de minimis* net change to the geographic coverage area and a net loss of population coverage.²⁴ We also find that denial of FPL's request is distinguishable from our grant of a 900 MHz waiver request in *Flint Hills Resources*, where we concluded that the replacement of the applicant's system at the same locations and cancellation of its existing 900 MHz licenses would preserve the current landscape of authorized 900 MHz operations.²⁵ Unlike *Flint Hills Resources*, FPL requests authority to expand its operations to 24 new locations and does not seek to replace frequencies at existing locations. Although FPL holds licenses on the substantial majority of the requested channels somewhere in its existing 900 MHz network,²⁶ the locations requested are so distant from FPL's existing network that, under the Commission's co-channel base station separation rules,²⁷ and absent the freeze, any eligible entity could have filed an application to operate on the same frequencies requested by FPL.²⁸

8. We find distinguishable two Mobility Division freeze waiver grants—in *Arizona Public*

¹⁹ *Id.*

²⁰ 47 CFR § 1.925(b)(3).

²¹ See Waiver Request at 1.

²² *Lower Colorado River Authority; Review for Waiver of 900 MHz Application Freeze*, Order, DA 20-636 (WTB June 17, 2020).

²³ *Rohm and Haas Texas Inc.; Review for Waiver of 900 MHz Application Freeze*, Order, 34 FCC Rcd 10436 (WTB 2019).

²⁴ *Long Island Power Authority – Request for Waiver*, Letter Order, DA 20-552 (WTB May 22, 2020).

²⁵ *Flint Hills Resources Corpus Christi, LLC; Requests for Waiver of 900 MHz Application Freeze*, Order, 34 FCC Rcd 8071 (WTB 2019); *Flint Hills Resources*, Letter Order, 35 FCC Rcd 606 (WTB 2020).

²⁶ FPL is requesting a total of 138 unique base frequencies. Of the 138 unique frequencies, 124 channels are licensed on existing call signs within FPL's 900 MHz system. See ULS Search for active 900 MHz licenses for FRN 0001825314.

²⁷ 47 CFR § 90.621(b).

²⁸ See *Lower Colorado River Authority; Review for Waiver of 900 MHz Application Freeze*, Order, DA 20-636, at 4, para. 8 (WTB June 17, 2020).

Service Company and *Dominion Nuclear Connecticut, Inc.*²⁹—on which FPL relies. *Arizona Public Service Company* involved an 800 MHz application freeze imposed to preserve vacant channels for licensees retuning their systems in border regions to facilitate 800 MHz rebanding. In granting relief, the Division found unique and unusual circumstances, including that the applicant: (1) demonstrated that grant of the requested frequencies would not impact the rebanding process; and (2) committed to returning unneeded channels after replacing its system.³⁰ In addition, the Division determined that, without a waiver, the safety and welfare of the general public could be at risk.³¹ The 900 MHz freeze waiver was imposed to maintain the spectrum landscape for a potential transition to broadband. FPL's circumstances are not unusual or unique; it has not demonstrated that grant of its request would have no impact on a potential transition to broadband in the counties where it seeks to operate, and FPL seeks permanent authority to operate on the requested channels. We also find inapposite FPL's reliance on *Dominion Nuclear Connecticut, Inc.*, where we determined the applicant had experienced harmful interference in its use of 450 MHz band and lower frequencies and that the applicant had no reasonable alternative to 900 MHz spectrum.³² Further, in that case, we found it to be a unique or unusual circumstance that the applicant required 900 MHz spectrum to comply with homeland security requirements imposed by the U.S. Nuclear Regulatory Commission.³³ Unlike *Dominion Nuclear Connecticut, Inc.*, FPL is not seeking to resolve interference concerns, and its transaction does not present unique or unusual circumstances.

9. We also are not persuaded by FPL's arguments that a waiver of the freeze is warranted so that FPL can construct an interoperable, cost-effective network.³⁴ FPL's parent company NextEra's acquisition of Gulf Power, an entity with no 900 MHz licenses in its service territory, is a business decision. Under the facts presented, we find that the underlying purpose of the freeze would be frustrated if we were to allow FPL to acquire frequencies in the 900 MHz broadband and narrowband segments to build a new 900 MHz network in the Florida Panhandle, well outside FPL's existing geographic coverage area, particularly given the Commission's recent action to facilitate a transition of the 900 MHz band to broadband.

10. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Waiver Request filed on November 28, 2018, in association with application FCC File Nos. 0008453005, 0008453084, 0008453085, 0008453086, 0008453087, 0008453088, 0008453089, 0008453090, and 0008453093 IS DENIED, and applications FCC File Nos. 0008453005, 0008453084, 0008453085, 0008453086, 0008453087, 0008453088, 0008453089, 0008453090, and 0008453093 ARE DISMISSED.

²⁹ Waiver Request at 4, n. 10 (citing *Arizona Public Service Company; Request for Waiver of 800 MHz Licensing Freeze for Proposed Statewide Trunked Radio System*, Order, 32 FCC Rcd 9437 (WTB 2017) and *Dominion Nuclear Connecticut, Inc.; Request for Waiver of 900 MHz Application Freeze*, Order, 21 FCC Rcd 14345 (WTB 2006)).

³⁰ *Arizona Public Service Company; Request for Waiver of 800 MHz Licensing Freeze for Proposed Statewide Trunked Radio System*, Order, 32 FCC Rcd 9437, 9439-40, para. 7 (WTB 2017).

³¹ *Id.*

³² *Dominion Nuclear Connecticut, Inc.; Request for Waiver of 900 MHz Application Freeze*, Order, 21 FCC Rcd 14345, 14346, paras. 4, 6 (WTB 2006). *Dominion Nuclear Connecticut, Inc.* involved a 2004 900 MHz application freeze imposed to accommodate displaced systems during the 800 MHz reconfiguration process.

³³ *Id.* at 14346, para. 6.

³⁴ See Waiver Request at 2-5. As we find that FPL does not merit waiver relief to establish a new 900 MHz system in conjunction with NextEra's acquisition of Gulf Power, we need not reach FPL's request to be permitted to file future applications to fill in any coverage gaps within the contours of those new sites.

11. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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